



STATE OF INDIANA

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July 30, 2009

John Espar
Espar & Associates, P.C.
501 Pine Street
Michigan City, Indiana 46360

Re: Informal inquiry 09-INF-23 regarding copy fees

Dear Mr. Espar:

This advisory opinion is in response to your informal inquiry dated July 8, 2009. Pursuant to Ind. Code § 5-14-4-10(5), I issue the following opinion in response to your inquiry.

You write to inquire whether the \$1.00 per page fee the Porter County Circuit Court Clerk charges for copying of court case records is appropriate under the Access to Public Records Act ("APRA") (Ind. Code 5-14-3). My office provided the Clerk the opportunity to respond to the inquiry. Enclosed is a copy of the Clerk's response as well as a copy of a response from the Indiana Supreme Court Division of State Court Administration.

As you indicate, I.C. § 33-37-5-1 provides that a circuit court clerk shall collect a fee of \$1.00 per page for preparing a copy of a court record. And as you further indicate, the APRA provides that a charge for copying may not exceed the greater of ten cents or the actual copying cost. I.C. § 5-14-3-8(d). You inquire how the two can be reconciled.

The APRA is a statute of general application. So while the fee provided in I.C. § 5-14-3-8(d) applies to any public agency that is not a state agency, that fee provision may be superseded by another statute:

Notwithstanding subsection (b), (c), (d), (g), (h), or (i), a public agency shall collect any certification, copying, facsimile machine transmission, or search fee that is specified by statute or is ordered by a court.
I.C. § 5-14-3-8(f).

As the Division of State Court Administration points out, because I.C. § 33-37-5-1(b) requires the Clerk to collect a \$1.00 per page fee for each court record copied, I.C. § 5-14-3-8(f) also then requires the Clerk to collect the \$1.00 per page fee. As the Division

further indicates, I.C. § 33-37-5-1(c) permits a county to adopt a fee structure which would charge less than \$1.00 per page, but Porter County has not done so. As such, the fee provided in I.C. § 33-37-5-1(b) must be collected.

Based on the foregoing, it is my opinion the \$1.00 per page copying fee the Porter County Circuit Court Clerk charges for copies of court records is appropriate under the APRA.

Please do not hesitate to contact me if I can provide any further assistance.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: James Walker, Indiana Supreme Court Division of State Court Administration
Pamela Mishler Fish, Porter County Circuit Court Clerk